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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,728	04/16/2004	Frank Tien	USP2423A-AMT	8823
30265	7590	05/23/2006	EXAMINER	
RAYMOND Y. CHAN 108 N. YNEZ AVE., SUITE 128 MONTEREY PARK, CA 91754			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 05/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,728	Applicant(s) TIEN, FRANK	
	Examiner Andrew T. Piziali	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 15,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14,16-21,24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-14, 16-21 and 24-25 in the reply filed on 4/18/2006 is acknowledged. Claims 15 and 22-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Claim Objections

2. Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 1, from which claim 24 ultimately depends, already claims that a fabric lining layer is attached to one side of the cushion layer.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-10 and 16-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 3,608,006 to Hosada et al. (hereinafter referred to as Hosada).

Regarding claims 1-10 and 16-19, Hosada discloses a lining structure comprising a foaming cushion layer made of a composition of a predetermined amount of LDPE (polyethylene made by high pressure) and a predetermined amount of blowing (foaming) agent, and a fabric layer integrally adhered to one side of the cushion layer (see entire document including column 1, lines 4-16, column 2, lines 18-27, and column 2, lines 50-58).

Hosada discloses that the cushion layer may be made by milling the polyethylene with a cross-linking agent and a foaming agent, molding the composition into a sheet, and heating the composite at a temperature to form a cross-linked foam cushion (column 1, lines 43-53). Hosada does not specifically mention the cushion layer being waterproof and breathable, but considering that the cushion layer is made of identical materials by a substantially identical process, it appears that the cushion layer would inherently be waterproof and breathable.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

In the event that it is shown that Hosada does not disclose the claimed invention with sufficient specificity, the invention is obvious because Hosada discloses that claimed constituents (such as low density polyethylene and a foaming agent) and discloses that they may be used in combination. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the claimed composite motivated by the expectation of successfully practicing the invention of Hosada.

Regarding claim 2, Hosada discloses that a further sheet of cover layer made of fabric may be integrally adhered to another side of the cushion layer (column 3, lines 61-column 4, lines 62-64).

Regarding claims 3-4, 9-10 and 19, Hosada discloses that the foaming agent may be azodicarbonamide (column 3, lines 21-30).

Regarding claims 5-10 and 16-19, Hosada discloses that the cushion layer may be made by milling the polyethylene with a cross-linking agent and a foaming agent, molding the composition into a sheet, and heating the composite at a temperature to form a cross-linked foam cushion (column 1, lines 43-53). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show obvious difference between the

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claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Claim Rejections - 35 USC § 103

6. Claims 11-14, 20-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,608,006 to Hosada as applied to claims 1-10 and 16-19 above, and further in view of USPN 4,446,254 to Nakae et al. (hereinafter referred to as Nakae).

Regarding claims 11-14, 20-21 and 24-25, Hosada discloses that additives including ZnO and a stearic acid salts may be added to the cushion layer (column 3, lines 51-61), but Hosada does not appear to specifically mention the addition of ZnSt (zinc stearate) or a pigment. Nakae discloses that it is known in the crosslinked polyolefin foam art to add a pigment processing agent when a certain color is desired (see entire document including column 8, lines 44-50). Nakae also discloses that it is known in the crosslinked polyolefin foam art to add zinc stearate, a stearic acid salt, as a lubricant and/or expansion agent (column 11, lines 48-62 and column 24, lines 60-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a pigment and zinc stearate to the cushion layer, as taught by Nakae, because the additives would allow the cushion to have a desired color and because the additives would function as a lubricant and/or an expansion agent.

Regarding claims 12-14, 21 and 24-25, Hosada discloses that 100 phr of LDPE and 1 to 10 phr of foaming agent may be used (column 2, lines 66-68 and column 3, lines 36-45), but Hosada also discloses that the amounts of the constituents may be varied based upon the desired property and the specific foaming agent (column 3, lines 36-45). Nakae discloses that the zinc stearate may be added in an amount of about 1 phr (column 11, lines 48-62). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the constituent amounts because it is understood by one of ordinary skill in the art that the constituent amounts determine properties such as foam expansion, evolution of gas, and color intensity, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 13-14, Hosada discloses that the cushion layer may be made by milling the polyethylene with a cross-linking agent and a foaming agent, molding the composition into a sheet, and heating the composite at a temperature to form a cross-linked foam cushion (column 1, lines 43-53). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

Regarding claims 14 and 24-25, Hosada discloses that a further sheet of cover layer made of fabric may be integrally adhered to another side of the cushion layer (column 3, lines 61-column 4, lines 62-64).

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7. Claims 1-10 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,435,346 to Ito et al. (hereinafter referred to as Ito) in view of USPN 3,608,006 to Hosada.

Regarding claims 1-10 and 16-19, Ito discloses a foaming cushion layer made of a composition of a predetermined amount of LDPE and a predetermined amount of blowing (foaming) agent (see entire document including column 3, lines 16-35, column 7, lines 50-61, and column 8, lines 10-21). Ito does not appear to mention a fabric layer integrally adhered to one side of the cushion layer, but Hosada discloses that it is known in the foamed polyethylene art to integrally adhere at least one fabric lining layer to one or both sides of a cushion layer so that the cushion layer possesses a fabric feel and appearance and because it can be used for a broad array of consumer goods (see entire document including column 1, lines 4-16, column 2, lines 18-27, column 3, lines 62-69, and column 4, lines 62-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrally adhere at least one fabric lining layer to one or both sides of the cushion layer, as taught by Hosada, because the cushion layer would possess fabric feel and appearance and because it could be used in a broad array of consumer goods.

Ito discloses that the cushion layer may be made by blending the constituents, shaping, heating to a cross-linking temperature, and mechanically deforming the foamed product to rupture the cell membranes to transform closed cells to open cells (column 3, lines 16-35). Ito does not specifically mention the cushion layer being waterproof and breathable, but considering that the cushion layer is made of identical materials by a substantially identical process, it appears that the cushion layer would inherently be waterproof and breathable.

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Regarding claims 3-4, 9-10 and 19, Ito discloses that the foaming agent may be azodicarbonamide (column 8, lines 10-21).

Regarding claims 5-10 and 16-19, Ito discloses that the cushion layer may be made by blending the constituents, shaping, heating to a cross-linking temperature, and mechanically deforming the foamed product to rupture the cell membranes to transform closed cells to open cells (column 3, lines 16-35). Compare to the method disclosed on page 8, lines 6-14 of the current specification. Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

8. Claims 11-14, 20-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,435,346 to Ito in view of USPN 3,608,006 to Hosada as applied to claims 1-10 and 16-19 above, and further in view of USPN 4,446,254 to Nakae.

Regarding claims 11-14, 20-21 and 24-25, Ito discloses that additives including ZnO, pigment, and/or a stearic acid may be added to the cushion layer (column 8, lines 35-57), but Ito does not appear to specifically mention the addition of ZnSt (zinc stearate). Nakae discloses that it is known in the crosslinked polyolefin foam art to add zinc stearate, a stearic acid, as a lubricant and/or expansion agent (see entire document including column 11, lines 48-62 and column 24, lines 60-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add zinc stearate to the cushion layer, as taught by Nakae, because the additive would function as a lubricant and/or an expansion agent.

Regarding claims 12-14, 21 and 24-25, Hosada discloses that 100 phr of LDPE and 1 to 10 phr of foaming agent may be used (column 2, lines 66-68 and column 3, lines 36-45), but Hosada also discloses that the amounts of the constituents may be varied based upon the desired

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property and the specific foaming agent (column 3, lines 36-45). Nakae discloses that the zinc stearate may be added in an amount of about 1 phr (column 11, lines 48-62). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the constituent amounts because it is understood by one of ordinary skill in the art that the constituent amounts determine properties such as foam expansion, evolution of gas, and color intensity, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 13-14, Ito discloses that the cushion layer may be made by blending the constituents, shaping, heating to a cross-linking temperature, and mechanically deforming the foamed product to rupture the cell membranes to transform closed cells to open cells (column 3, lines 16-35). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

9. Claims 1-10 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,242,634 to Matsumoto et al. (hereinafter referred to as Matsumoto) in view of USPN 3,608,006 to Hosada.

Regarding claims 1-10 and 16-19, Matsumoto discloses a foaming cushion layer made of a composition of a predetermined amount of LDPE and a predetermined amount of foaming agent (see entire document including column 5, lines 15-54 and column 5, lines 55-66).

Matsumoto does not appear to mention a fabric layer integrally adhered to one side of the cushion layer, but Hosada discloses that it is known in the foamed polyethylene art to integrally adhere at least one fabric lining layer to one or both sides of a cushion layer so that the cushion layer possesses a fabric feel and appearance and because it can be used for a broad array of

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consumer goods (see entire document including column 1, lines 4-16, column 2, lines 18-27, column 3, lines 62-69, and column 4, lines 62-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrally adhere at least one fabric lining layer to one or both sides of the cushion layer, as taught by Hosada, because the cushion layer would possess fabric feel and appearance and because it could be used in a broad array of consumer goods.

Matsumoto discloses that the cushion layer may be made by blending the constituents, shaping, irradiating and thus heating, decomposing cross-linking and foaming agent, forming cells capable of rupture, exerting mechanical deformation thereby stabilizing intercommunication among the cells (column 2, lines 30-52). Matsumoto does not specifically mention the cushion layer being waterproof and breathable, but considering that the cushion layer is made of identical materials by a substantially identical process, it appears that the cushion layer would inherently be waterproof and breathable.

Regarding claims 3-4, 9-10 and 19, Matsumoto discloses that the foaming agent may be azodicarbonamide (column 5, lines 64-66).

Regarding claims 5-10 and 16-19, Matsumoto discloses that the cushion layer may be made by blending the constituents, shaping, irradiating and thus heating, decomposing cross-linking and foaming agent, forming cells capable of rupture, exerting mechanical deformation thereby stabilizing intercommunication among the cells (column 2, lines 30-52). Compare to the method disclosed on page 8, lines 6-14 of the current specification. Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

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10. Claims 11-14, 20-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,242,634 to Matsumoto in view of USPN 3,608,006 to Hosada as applied to claims 1-10 and 16-19 above, and further in view of USPN 4,446,254 to Nakae.

Regarding claims 11-14, 20-21 and 24-25, Matsumoto discloses that additives including ZnO, pigment, and/or a stearic acid may be added to the cushion layer (column 6, line 64 through column 7, line 14), but Matsumoto does not appear to specifically mention the addition of ZnSt (zinc stearate). Nakae discloses that it is known in the crosslinked polyolefin foam art to add zinc stearate, a stearic acid, as a lubricant and/or expansion agent (see entire document including column 11, lines 48-62 and column 24, lines 60-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add zinc stearate to the cushion layer, as taught by Nakae, because the additive would function as a lubricant and/or an expansion agent.

Regarding claims 12-14, 21 and 24-25, Hosada discloses that 100 phr of LDPE and 1 to 10 phr of foaming agent may be used (column 2, lines 66-68 and column 3, lines 36-45), but Hosada also discloses that the amounts of the constituents may be varied based upon the desired property and the specific foaming agent (column 3, lines 36-45). Nakae discloses that the zinc stearate may be added in an amount of about 1 phr (column 11, lines 48-62). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the constituent amounts because it is understood by one of ordinary skill in the art that the constituent amounts determine properties such as foam expansion, evolution of gas, and color intensity, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 13-14, Matsumoto discloses that the cushion layer may be made by blending the constituents, shaping, irradiating and thus heating, decomposing cross-linking and foaming agent, forming cells capable of rupture, exerting mechanical deformation thereby stabilizing intercommunication among the cells (column 2, lines 30-52). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

11. Claims 1-10 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Application Publication 56-146732 to Ichii et al. (hereinafter referred to as Ichii) in view of USPN 3,608,006 to Hosada.

Regarding claims 1-10 and 16-19, Ichii discloses a foaming cushion layer made of a composition of a predetermined amount of LDPE and a predetermined amount of foaming agent (see entire document including patent abstract). Ichii does not appear to mention a fabric layer integrally adhered to one side of the cushion layer, but Hosada discloses that it is known in the foamed polyethylene art to integrally adhere at least one fabric lining layer to one or both sides of a cushion layer so that the cushion layer possesses a fabric feel and appearance and because it can be used for a broad array of consumer goods (see entire document including column 1, lines 4-16, column 2, lines 18-27, column 3, lines 62-69, and column 4, lines 62-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrally adhere at least one fabric lining layer to one or both sides of the cushion layer, as taught by Hosada, because the cushion layer would possess fabric feel and appearance and because it could be used in a broad array of consumer goods.

Ichii discloses a method of making a polyethylene resin open cell cellular body by partially decomposing a foaming (expanding) and a crosslinking agent in a foamable and crosslinkable composition of polyethylene resin material in a closed mold, then decomposing the remaining parts of the foaming and crosslinking agents under an atmospheric pressure to obtain a body with closed cells from the composition, and finally compressing the thus obtained body to cause the closed cells to be destructed (see column 1, lines 13-24 of USPN 6,517,764). Ichii does not appear to specifically mention the cushion layer being waterproof and breathable, but considering that the cushion layer is made of identical materials by an exactly identical process (word for word), it appears that the cushion layer would inherently be waterproof and breathable.

Regarding claims 3-4, 9-10 and 19, Hosada discloses that the foaming agent may be azodicarbonamide (column 3, lines 21-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the foaming agent from any suitable foaming agent material, such as azodicarbonamide, as taught by Hosada, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 5-10 and 16-19, Ichii discloses a method of making a polyethylene resin open cell cellular body by partially decomposing a foaming (expanding) and a crosslinking agent in a foamable and crosslinkable composition of polyethylene resin material in a closed mold, then decomposing the remaining parts of the foaming and crosslinking agents under an atmospheric pressure to obtain a body with closed cells from the composition, and finally compressing the thus obtained body to cause the closed cells to be destructed (see column 1, lines 13-24 of USPN 6,517,764). Compare to the method disclosed on page 8, lines 6-14 of the

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current specification, which is noticeably word-for-word identical. Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

12. Claims 11-14, 20-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Application Publication 56-146732 to Ichii in view of USPN 3,608,006 to Hosada as applied to claims 1-10 and 16-19 above, and further in view of USPN 4,446,254 to Nakae.

Regarding claims 11-14, 20-21 and 24-25, Hosada discloses that additives including ZnO and a stearic acid salts may be added to the cushion layer to accelerate gas evolution (column 3, lines 51-61). Nakae discloses that it is known in the crosslinked polyolefin foam art to add a pigment processing agent when a certain color is desired (see entire document including column 8, lines 44-50). Nakae also discloses that it is known in the crosslinked polyolefin foam art to add zinc stearate, a stearic acid salt, as a lubricant and/or expansion agent (column 11, lines 48-62 and column 24, lines 60-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a pigment, zinc oxide, and zinc stearate to the cushion layer, because the additives would allow the cushion to have a desired color, improve gas evolution, and because the additives would function as a lubricant and/or an expansion agent.

Regarding claims 12-14, 21 and 24-25, Hosada discloses that 100 phr of LDPE and 1 to 10 phr of foaming agent may be used (column 2, lines 66-68 and column 3, lines 36-45), but Hosada also discloses that the amounts of the constituents may be varied based upon the desired property and the specific foaming agent (column 3, lines 36-45). Nakae discloses that the zinc stearate may be added in an amount of about 1 phr (column 11, lines 48-62). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the

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time the invention was made to vary the constituent amounts because it is understood by one of ordinary skill in the art that the constituent amounts determine properties such as foam expansion, evolution of gas, and color intensity, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 13-14, Ichii discloses a method of making a polyethylene resin open cell cellular body by partially decomposing a foaming (expanding) and a crosslinking agent in a foamable and crosslinkable composition of polyethylene resin material in a closed mold, then decomposing the remaining parts of the foaming and crosslinking agents under an atmospheric pressure to obtain a body with closed cells from the composition, and finally compressing the thus obtained body to cause the closed cells to be destructed (see column 1, lines 13-24 of USPN 6,517,764). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

Conclusion

13. The following patent is cited to further show the state of the art with respect to waterproof and breathable foamed low density polyethylene materials:

USPN 5,169,712 to Tapp

(see entire document including column 2, lines 46-53 and column 18, lines 42-52)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541.

The examiner can normally be reached on Monday-Friday (8:00-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ANDREW T. PIZIALI
PATENT EXAMINER